TENDENCIES OF FACTORY LEGISLATION AND INSPECTION IN THE UNITED STATES

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The introduction of the factory system in American industry acted in this country, as it had in England, to develop certain abnormal conditions of labor that in the end required government interference. Thus in the manufacturing states, chiefly in the North and East, there has come into existence a very considerable body of factory law. The enactment of such regulative statutes is the prerogative of each of the several states acting independently and according to the discretion of its own legislature; in consequence there is great variety in these laws and in their scope,—from the comparatively complete codes of Massachusetts and New York to absolutely no regulation whatever.

Present Factory Laws of the United States.[1]

"In all, about half the states have so far passed what may be called a factory act; that is, laws for the regulation, mainly sanitary, of conditions in factories and workshops. These include . . . the New England states generally, New York and the Northern Central and Northwestern states following their legislation. There are almost no factory acts in the South nor in the purely agricultural states of the West, but these statutes are being passed rapidly and moreover, in states where they have already been enacted, are being amended every year.

"The most usual statutes are those making provision for proper fire-escapes, or against use of explosive oils, etc.; for the removal of noxious vapors or dust by fans or other contrivances; requiring guards to be placed about dangerous machinery, belting, elevators, wells, air-shafts, crucibles, vats, etc.; providing that doors shall open outward; prohibiting the machinery from being cleaned while in motion; laws to prevent overcrowding and to

[1] This discussion is based upon the Report of the U. S. Industrial Commission, Vol. V, on Labor Legislation.

secure sanitary conditions generally."[1] Building laws also reenforce these measures.

Antedating such factory acts proper, the same states have very generally pass d statutes regulating child labor and forbidding employment to those under a stated age. In eleven states this age limit is fourteen years, in nine over twelve, and in four,—New Hampshire, Vermont, Nebraska, and California,—ten years; eleven also make educational provision for older children and illiterate minors.[2]

The majority of states have further legislated upon the hours f labor of minors , while fifteen limit the working time of women as well, generally to sixty hours per week, but in Massachusetts to fifty-eight hours, in New Jersey to fifty-five, and in Wisconsin to forty-eight.[3] Eight also provide for time for meals, and five prohibit night work.[4] This limitation of hours for women and children, considered "wards of the state," very generally necessitates a similar working day for the adult male laborer in the factory, while it in a measure avoids the serious question of constitutionality that a broader statute could not fail to raise.

"There is absolutely no limitation for persons of any age or sex only in Iowa, Kansas, Oregon, Nevada, Washington, Idaho, Montana, Wyoming, Utah, Kentucky, Arkansas, Texas, North Carolina, Alabama, Florida, Mississippi, New Mexico, Arizona, Oklahoma, and the District of Columbia."[5]

Besides these statutes, other laws that must be mentioned, as immediately affecting the interests of factory labor, are those which regulate wage payment and fines, also the employers' liability acts which allow recovery of damages for bodily injury

[1] Report of the U. S. Industrial Commission, Vol. V, pp. 100-101. N. H., Me., Mass., Vt., R. I., Conn., N. Y., N. J., Penna., Ohio, Ind., Ill., Mich., Wis., Minn., Neb., Del., Mo., N. Dak., S. Dak., Ga., La., D. C., Wash., Mont., Wy., Md., Cal., Tenn. These range from complete acts, like those of N. Y. and Mass., to fire-escape provisions only, as in N. H., Me., Del., Va., Ga. etc., while Ala., the Carolinas, etc., are still entirely outside of the group.

[2] *Child labor*—(14 yrs.) Mass., Conn., N. Y., Ind., Ill., Mich., Wis., Minn., Col.; (girls 14 yrs., and boys 12 yrs.), N. J., La.; (13 yrs.), Penna., Ohio; (12 yrs.), Me., R. I., Wis., Md., W. Va., N. Dak., Tenn.

[3] *Hours of labor.*—(Women and minors), Mass., Me., N. H., R. I., Conn., N. Y., N. J., Penna., Wis., Neb., S. Dak.. N. Dak., Okla., Va., La.; (Minors), Ind., Vt., Ohio, Ill , Mich., Minn., Cal., Md., Ga.

[4] *Night work and meal hours.*—N. Y., Mass., Neb., Ind., Mich.; (meal hours), La., Penna., Ohio.

[5] *Ibid.*, p. 40.

sustained in service. Thirteen states have passed laws regulating the period of payment by individuals and corporations, and nine others stipulate weekly or fortnightly payments by corporations. Only Massachusetts, Indiana and Ohio have attempted to "prevent the withholding of wages or the imposition of a fine by factory employers for imperfect work."

Outside of the New England states "anti-truck acts," similar to the English statute and stipulating a money payment, have been passed in sixteen states, five of which, however, limit its application to corporations. It may be noted in passing that several of these wage-regulating laws have already fallen under the ban of the courts.

Employers' liability statutes supplement the factory acts by affording additional reason for care on the part of the employer in guarding dangerous machinery and otherwise providing for the safety of those in his employ. Twenty-two states have legislated upon the "fellow-servant" question, and ten make employers liable for injury caused by defective machinery. Of these, however, only six apply in full to factory labor.

The states that have passed factory acts and regulated hours of labor "have usually created one or more factory inspectors, charged with the duty of seeing that the statutes are carried out generally with powers to enter personally or by deputy and to inspect all factories at any time." [1]

The child labor laws are variously entrusted for enforcement to the factory inspectors, school committee or board of education, commissioners of labor, or left to the care of the police.

Historical Development.

It may seem perhaps that such a sketch fails to show the underlying or directive principle of this legislation, but a detailed study of the laws adds confusion rather than enlightenment. Studnitz considered that he had seized upon the real causal force and summed up the situation in the statement that American labor legislation has been determined by the political and social strength of the laborers demanding it, rather than in accordance with the natural needs and varied conditions of industry within the states.[2]

[1] Report of the U. S. Industrial Commission, Vol. V, p. 100.

[2] Studnitz Nordamerikanische Arbeiterverhältnisse.

Allowing this explanation at least as to the immediate agency, we must nevertheless recognize the fact that other forces are at work and that there are traceable tendencies of a natural growth even when arbitrary human action is so apparent. The most casual acquaintance with the history of labor legislation must convince us that the action of economic law has inevitably necessitated the legal regulation of labor; and this really in spite of human opposition and in the face of extreme doctrines of non-interference. Industrial labor unregulated has everywhere developed the same symptoms. Competition between producers tends to encourage all possible reductions of costs, to reduce wages, to increase the use of cheap child labor, to perpetuate long hours of labor, etc., and to range the interests of the employing class against those of the operative class. In the struggle which results from this antagonism the employer has the advantage of position to force his own terms of contract upon the laborer, for he has in his hands an accumulated capital which is equivalent in power to effective organization. Such conditions left to work themselves out have invariably acted to degrade the social status of labor, the heaviest pressure falling upon those who could least resist it. This was the experience of England first, then felt on the Continent and in this country in the New England states and other centres of manufacture, and to-day we are becoming aware of like tendencies in the cotton-goods industry of the South.

It was almost universally the evils attending child labor that evoked the first acts of regulation. But although abuses were very serious, legal remedies were most timidly applied. Even with the example of the successful issue of the English laws the New England legislatures contented themselves with the passage of most inadequate measures, measures that could hardly have been looked upon as anything more than unenforcible threats. We realize how complete a change of attitude toward this "intermeddling legislation" has been brought about during the course of the past sixty years when we compare a few of these old laws with those to-day in force. Contrast, for example, the detailed and exacting requirements of the present law concerning child labor in Massachusetts with the older Vermont statute, which is quite typical of the earlier order and "merely requires the selectmen of towns to inquire into the treatment of minors employed in manufacturing establishments; and if a minor's education, morals, etc., are unreasonably

neglected, or he is treated with improper severity or compelled to labor unreasonable hours, they may, if he has no parent or guardian, discharge him from such employment and bind him out as apprentice with the minor's consent." (Vt. 2518.)[1]

Early measures were certainly neither severe in the regulation imposed nor exact in defining the parties held to be responsible. They generally involved a question of volition, making "willful" transgression alone punishable, and thus unenforcible in the letter, were given into the hands of town officials who had neither the power nor the effective desire to investigate or to bring suit.

Such enactments stood for little more than a public recognition of abuses which they in no wise checked, but the increasing menace of the situation, the threat, not to be scorned, of a future sickly and illiterate labor population, forced the passage of more adequate measures and the resort to a better mechanism of enforcement than that of town officials and the general police. In such reforms Massachusetts took the lead, enacted and repealed several contradictory statutes, and finally by the slow process of continued amendment evolved the present really enforcible law.

We feel in studying the halting stages of this development not only that there was a pardonable ignorance of ways and means in attacking a new problem, but also the influence of a more or less skeptical public opinion concerning this policy of interference which reflected itself in hedging clauses that weakened and sometimes vitiated what would otherwise have been good measures.

In spite of many drawbacks to advance, however, there was no retrograde motion, but a continued development of strictness and detail in exactions, of clearer definition and placement of responsibility and of more adequate provision for inspection. As these laws gradually demonstrated their practical usefulness and convinced the public of benefit instead of harm, the former attitude of timidity gave place to a decided peremptoriness, the former indiscriminate *omnibus ad quos hae litteræ pervenerint* to placed responsibility.

Meantime the way was opened for more wide-reaching regulations concerning hours of labor, work-room conditions, etc., and a broader conception of the province of such legislation and of that which might be considered proper subject of legal interference.

[1] Industrial Commission, Vol. V, p. 48.

Whereas the first attempts to protect even little children from conditions that imperiled their health and life were bitterly opposed in England upon grounds of national policy, to-day we find statutes that regulate not only child labor, hours of labor, factory constructions and the use of machinery, but also others that stipulate times and manner of wage payment, and forbid fines in dealings with adult male employees. And this has come to pass in America where "freedom of contract" is the constitutional right of every individual citizen.

Our laws have indeed very steadily progressed from measures of simple protection to detailed regulation of conditions, and even to the securing of special benefits to labor.

This broader application of the legal remedy has been accompanied also by marked territorial extension, following the growth and spread of manufactures. Other states have felt the necessity of adopting a labor code and have naturally, in a general way, followed the forms of New England and New York. They range, however, through all stages of incompleteness. A curious phenomenon constantly appears in this imitative legislation. When a state legislature passes a new labor law, or revises an old one, it does not necessarily adopt the latest form nor that which has proved to work most satisfactorily in another state, nor yet a combination of choice clippings from several. A state legislature is generally perfectly content with a law that is about as poor as the average and looks forward most placidly to the inevitable train of amendments that must follow in its wake. By this I do not mean to criticise in the least the enactment of less strict regulations as a lower age limit or longer hours of labor, which may be proper under given local conditions, but alone the continued repetition of blunders and faults of construction that have elsewhere proved their character and their power to nullify the intent of the law. Fortunately experience proves in the end an effective, if dear, teacher and one of the lessons that it ultimately drives home is that even a state legislature cannot legislate the laws of nature out of the world arena. As Jevons said, "The state is the least of the powers that govern us." But as the physician through his knowledge of medicine and physiology, and by his diagnosis of the symptoms of disease, is able to pit law against law, and to restore health where he found abnormal conditions; so the statesman who understands the social order and the tendencies of economic forces

is often able to control their action. In either case, a knowledge of the active agencies is absolutely necessary to the solution of the problem. The recent organization of bureaus of labor statistics is certainly significant in this connection. To-day, when a question of labor legislation is presented, there is, in many states, such a qualified advisory body to whom the whole matter may be referred for investigation and study, and whose regular duty it is to inquire into and report upon labor and industrial conditions within the state. This indicates a growing appreciation of the necessity of accurate information and of the exercise of due care in passing acts of regulation.

Enforcement by Inspection.

The problem of enforcement of these laws has proved even more serious than that of their enactment. Labor laws, however good, cannot enforce themselves. It may appear to be for the laborer's own interest to report violations and seek the legal remedy, but the indisputable fact is that he does not do it. Moreover, not only is the individual laborer often not in a position to do so safely, but even the labor union shrinks from the task. The whole history of the movement for the regulation of labor shows the absolute necessity of efficient inspection, a fact which has unfortunately been most clearly demonstrated in the general lack of such inspection. In nothing do the states differ more widely than in their provision for inspection. There are such specifically differentiated departments as that of Massachusetts or New York; there are such combinations as that of Connecticut, where a single inspector with two or three assistants enforces the factory, workshop and bake-shop acts, while the Board of Education is charged with the child labor laws; and there is dependence alone upon the general police force.

Inspection always lags too far behind legislation and has given some ground of credit to the often-repeated criticism that this labor legislation is not in fact intended seriously, but has been entered upon the statute books rather to still the clamor of agitators for reform than to effect any real change in conditions. It is certain at least that the serious effectiveness of these laws develops in exact proportion with the inspecting power,—with the organization, number and qualification of inspectors. If the charge of insincerity, however, had been true, we might expect to find that the

better the laws became, the stronger the pressure that would be brought against the development of costly inspection. The legal remedy being given, is it not the privilege of the individual to avail himself of it, rather than the duty of the state to force it upon him? On the contrary, however, the history of inspection runs parallel and in the same direction with that of the legislation just reviewed. The same economic and social forces that were the *raison d'être* of these laws have quite as distinctly and steadily, though more slowly, created the supplementary machinery of enforcement. The unreliable and haphazard inspection of town officials has passed entirely, superseded by the inspector whose sole duty is inspection, in which duty he is aided by assistants immediately under his own command, or by members of other departments of government. The tendency towards the development of *distinct* inspection departments is quite unmistakable though the exact form of their future organization is less easily predicted. There are two toward which present forms lean, one exemplified in Massachusetts, the other in New York.

In Massachusetts the inspectors are organized as a division of police, under the chief of police as chief inspector, exactly as the detective division, for instance. That of New York is a separate and distinct body under a chief appointed by the governor to hold that single office.

The question is therefore raised as to whether organic connection with the police department or separate and distinct autonomy is the more practical and advantageous form. It is conceded that Massachusetts has developed the most efficient corps of inspectors in this country, but this cannot at present be taken as conclusive proof of policy, because Massachusetts was earlier in the field, and because opposing obstacles were hardly so serious as those met in New York. Further, such connection with the police department in Massachusetts seems to have been largely due to local conditions and to have grown out of measures dictated by immediate convenience at the time of the passage of the early child labor laws, rather than a deliberately chosen system of administration. A clipping from the history of the department will make this clear.

"At first the unreliable mechanism of truant officers and local town or city officials was solely depended upon for inspection. Then, under new child labor statutes, a single deputy was in each case detailed by the police department to aid enforcement (1866,

c. 273; 1867, c. 285). The law of 1877 (c. 214), increasing the duties of factory inspection by regulations looking to the safety of employees, provided that members of the State Detective Department should act as inspectors of factories and public buildings, to report and prosecute violations of this act as well as of other measures relative to the employment of women and minors. . . . In 1879 (c. 305), the governor was authorized to appoint two regular inspectors from the police department. . . .

"Better administration was finally secured in 1888 (c. 113), by separating the detective and inspecting forces. . . . With the enactment of stringent steam-boiler inspection laws, a new department of boiler inspectors . . . was created."

While in some ways this affiliation with the police has been helpful, there are also drawbacks in the combination under one head of work in fields that are so large and so distinctly marked off from one another not only in object, but most essentially in methods of work. It would seem that a due co-operation between district departments could be made to afford all of the advantages of the closer relationship, while it would insure the whole time and energy of the chief to a task that is quite enough to occupy his entire attention. Indeed, with the increasing number and detail of regulations, the many technicalities that arise in the application of labor laws and the rapid growth of the factory system of industry, another specialist will soon be demanded to fill such an office. The necessary increase in numbers alone must make the police connection awkward.

In framing many of these laws, for example the factory acts, much has necessarily been left to the discretion of inspectors in the decision of what is "adequate" provision. Especially where appliances not contemplated in the ordinary law are offered, very careful judgment is called for. Such powers cannot be entrusted to untrained and inexperienced persons, however well intentioned, nor is the training of police duty any sufficient preparation. It would not be considered appropriate to appoint a policeman inspector of stationary steam boilers or examiner of engineers, yet under present factory laws, technical knowledge of industrial processes, machinery, etc., is sometimes equally demanded. In Massachusetts the original method of detailing police as inspectors when occasion demanded, or even permanently installing them in these positions, has been abandoned for the stricter and more

adequate tests of civil service examinations open to all applicants. And again her example indicates a general trend.

The tendency in inspection already is, and in the future must be more markedly, toward the growth of a distinct and specialized department, in which the chief and his assistants are trained for their work. Such a department, while it would not stand in the relationship which some at present hold to the police, would come into closer touch with other departments, as the Board of Education and Bureau of Labor.

Uniform Labor Legislation.

The influence of state boundary lines upon the course of legislation in this country is an interesting question, and one upon which entirely diverse opinions are held. Some go so far as to claim that there never can be really successful legislation so long as such boundaries hold; that if a good labor law is passed in one state and enforced there, the benefit that may result to the few operatives is balanced by the restriction which it puts upon the producer and the consequent discrimination against capital in that state as compared with its neighbors. Capital therefore seeks investment in those sister states instead of in the law-trammeled one, thus reacting against the interests of the labor market there; while states that so profit in their freedom are the more loath to give over their advantage by enacting similar measures. Thus legislation in one state becomes at once detrimental to its own industrial interests, and a check upon legislation elsewhere. Loud protests of this tenor were heard, for example, in Massachusetts a few years ago, when at a time of business depression the cotton mills suffered from the competition of Southern rivals. A somewhat extended study of the situation at that crisis, however, failed to show that these detrimental consequences had followed in actual life, or that the stress felt by the mills could have been removed by a suspension of the laws complained of.

On the other hand, when we begin to reckon with the difficulties that must be encountered in any attempt to legislate upon labor conditions in this country treated as a whole (even disregarding entirely the present constitutional impediment), we find arguments showing that local self-government has probably furthered the development of labor legislation. In the first place, it is much

more difficult to persuade a body with such wide jurisdiction to pass what must often be experimental measures and may endanger national interests. Suppose, however, that this legislation was undertaken, it would be well-nigh impossible to frame a measure that would apply with justice throughout and in communities where industrial occupations differ entirely in kind, or, if of like order, range through many stages of development. It would mean that such legislation must conform to a very low margin of production in order to avoid injury to states where conditions are backward, and that would leave unregulated much that has clearly shown need of regulation in states where there is higher organization of industry. Would it not, in fact, be absolutely necessary to mark out territorial divisions that might not of course follow state boundaries, but would not in the end differ essentially from them in character? Again, such divisions mapped, what an impossible labor is put upon the central body if it would legislate wisely for the several sections! Would it not be necessary at least to appoint some advisory body to study the local needs of each section and to report recommending appropriate measures? In the end, what would we have in the least better than the present system?

Within a single state the labor interest is united, the pros and cons of the situation can be more easily investigated, effects more easily watched and even more accurately predicted. Jevons might indeed have considered it a well-fitted laboratory for his scientific experimentation in legislation. The success of a local experiment acts often as an incentive to labor elsewhere to demand like privileges, and as against the argument of an insignificant tax upon production, the political power of the labor party has very generally won the day. The second state feels itself at no greater disadvantage than that which took the initiative in the movement, and may easily take the precaution of passing restrictions that are a trifle under those of its neighbor.

This discussion, however, leaves us still face to face with a confusion of local regulations, among which there is total lack of any uniformity. The situation has for some time attracted public comment, and there is a growing desire for uniformity especially in the protection of child labor and in the curtailment of the hours of labor, which are the regulations that particularly affect the interests of capitalists. Quixotic attempts to force an amendment of the Constitution, and to secure the passage of a national eight-hour-

day law, have been chronicled in the movement, which nevertheless, with more moderate aims, has steadily gathered strength. At last, under the Industrial Commission of 1898, the problem of uniform legislation has been clearly recognized and carefully studied, "in order," the act reads, "to harmonize conflicting interests and to be equitable to the laborer, the employer, the producer and the consumer" (Sec. 3). Empowered to report with recommendations either directly to Congress or to the several state legislatures, the Commission addressed itself in this "matter of domestic law" to the state legislatures. The report submitted is of such interest and importance that I quote in full its recommendations so far as they apply to factory labor:

"Perhaps the subject of greatest public interest to-day is that of the regulation of the hours of labor permitted in industrial occupations, and especially in factories. . . . Obviously Congress has no power, without a constitutional amendment, to legislate upon this subject. The Commission are of the opinion that a uniform law upon this subject may wisely be recommended for adoption by all the states. We believe that such legislation cannot, under the federal and state constitutions, be recommended as to persons, male or female, above the age of twenty-one, except, of course, in some special industries, where employment for too many hours becomes positively a menace to the health, safety, or well-being of the community; but minors, not yet clothed with all the rights of citizens, are peculiarly the subject of state protection, and still more so, young children.

"The Commission are of the opinion, therefore, that a simple statute ought to be enacted by all the states, to regulate the length of the working day for young persons in factories (meaning by young persons' those between the age of majority and fourteen); and in view of the entire absence of protection now accorded by the laws of many states to children of tender years, we think that employment in any capacity or for any time, under the age of fourteen, should be prohibited. The question of shops and mercantile establishments generally appears even more subject to local conditions than that of factories; therefore the Commission see no need for even recommending to the states any uniform legislation upon this subject. But child labor should be universally protected by educational restrictions, providing in substance that no child may be employed in either factories, shops, or in stores in large

cities, who cannot read and write, and except during vacation, unless he has attended school for at least twelve weeks in each year." [1]

These are certainly conservative recommendations and illustrate again the difficulty of finding any common ground of action even in the fundamental requirements of health and education. The exception made with reference to shops and mercantile establishments upon the ground of local differences in conditions is interesting. So much evidence has been brought of abuse of child labor in the mercantile houses of many large cities, especially in respect to these two matters of overwork through long hours and of interference with common-school education (above recognized) that several states have voluntarily extended provisions of the factory laws concerning minors to cover such establishments. These conditions appear to reproduce themselves with remarkable similarity in various locations, and it is not altogether clear what local conditions could intervene to make the universal application of the measure proposed for factories undesirable.

Notwithstanding all moderation and the exceptions allowed, two of the commissioners still recorded themselves as considering it "unjust and impracticable to attempt any uniform laws regulating labor in all the states," and a third concurring with these adds that, "the conditions to be dealt with will work themselves out better under local self-government than under any iron-clad rule adopted by or suggested from a central power." [2]

The protestors are from the Southern states and their protest seems peculiarly pertinent at this time, when the prevailing conditions of child labor in these states are attracting so much attention. Not to digress into a discussion that would lead us too far afield, let it suffice to sum up the evident facts of the situation in a single paragraph.[3]

Whatever their previous condition of freedom, barbarism or poverty, there are to-day, in the cotton mills of the South, large numbers of little children, some under ten years of age, who can be and are employed sometimes eleven and more hours a day, sometimes eleven hours of the night. Indeed conditions parallel the times

[1] Report of Industrial Commission (1900), Vol. V (pp. 3-4).

[2] *Ibid.*, p. 10.

[3] See pamphlet upon "Child Labor in Alabama," "An Appeal to the People and Press of New England, with a Resulting Correspondence," obtainable from the secretary of the Alabama Child Labor Committee, P. O. Box 347 Montgomery, Alabama, and from Room 614, 105 East Twenty-second Street, New York City.

of Shaftesbury in England! Attempts to pass bills that can hardly be deemed extravagant in the protection demanded, and even compulsory education measures, have been opposed and frustrated. The reasons given for such resistance of legal interference may be summarized about as follows, at least in Alabama, which has been the field of a recent encounter: That the bill presented by the Alabama Child Labor Committee[1] is "outside interference" and "only the entering wedge"; that "Georgia (facing the more difficult task in) having double the number of spindles, should act first"; that against the expressed desires of mill officers, parents insist upon the employment of their children or "take their families to other mills where no objection is made" (and this the law would make impossible);[2] that the prodigiously early development of this particular class of Southern children together with "the length and heat of the day" which "are prime factors respecting the hours that may be appropriated to labor"[3] make it inadvisable to limit the hours of labor of children to ten out of a possible twenty-four, or to require that they should sleep and not work at night. We cannot say that the movement for uniform legislation or even for labor legislation "under local self-government" is unopposed.

The recommendations of the Commission also include the following:

"Further regulations, especially in the line of bringing states which now have no factory acts up to a higher standard, is earnestly recommended.

"In states which have many factories the well-known factory act of Massachusetts or New York, based upon the English act which served as a model to all such, is recommended for adoption.

"The sweat-shop law also, which is now practically identical in the important states of New York, Massachusetts, Pennsylvania and Ohio, is recommended for general adoption.

"A simple and liberal law regulating the payment of labor should be adopted in all the states, providing that laborers shall be paid, for all labor performed, in cash or cash orders, without discount, not in goods or due bills, and that no compulsion, direct

[1] Alabama Child Labor Committee: Edgar Gardner Murphy, Rector of St. John's Episcopal Church, Montgomery; Thomas G. Jones, ex-Governor of Alabama; Lucien V. Lataste, Montgomery; J. H. Phillips, Superintendent of Schools, Birmingham; John Craft, Member of Legislature, Mobile; A. J. Reilly, Member of the Legislature, Ensley.

[2] J. H. Nichols, Treasurer, Alabama City Mill, Boston *Evening Transcript*, October 30.

[3] Report of Industrial Commission Vol. V, p. 10. J. W. Daniel, dissenting.

or indirect, shall be used to make them purchase supplies at any particular store."[1]

The report refers also to other statutes which reinforce certain common law doctrines, such as those concerning intimidation, strikes, boycotts and black-listing, to those protecting the political rights and legal rights in suit of labor and to the recognition accorded to trade unions in provisions for incorporation and protection of labels, making however no special recommendation concerning them to the states.

We see, therefore, that beyond the elementary regulation of child labor and hours of labor for minors, the Commission would have the states establish a standard of good sanitation and of safe conditions in factories everywhere, and above this, especially suggests a scientific and well-tested law for adoption in states having large manufactures. The restriction of hours is always looked upon chiefly as a health measure, but it is certain that the general bodily vigor of the worker has been more markedly affected by modern improvements in ventilation, lighting and sanitation than by any of the shorter day statutes. Factory acts assist materially in forcing this advance and have received a due recognition of their usefulness. In recommending the universal passage of a sweat-shop act, the Commission endorses the old saying, that an ounce of prevention is worth a pound of cure. As a matter of fact, such laws have been passed, and in an incredibly short time (since 1892, when New York passed the first of this series), in those states in which the evil is important. Attempts to extirpate the evil in these states threaten to drive it into neighboring sections. Connecticut, for example, lying between Massachusetts and New York, in both of which quarters the anti-sweat-shop war is being vigorously pushed, has enacted a similar statute simply as a protective measure.

It is clear that the ultimate effect of uniform labor legislation will not be one law applying throughout the length and breadth of this great land, but rather a graded system. It will determine a minimum standard of regulations, a basal plane of competition for American industry. Above this it will still be necessary for the local government in many places to impose stricter requirements where there is complexity of organization, but in that which is

[1] Report of Industrial Commission, Vol. V, pp. 4, 5, 7.
[2] *Ibid.*, p: 6.

fundamentally essential to the common well-being of the community there will be one limit approved for all that may not be transgressed.

The suggestion made in the Industrial Commission's report as to how this standard may be determined is especially well considered:

"In conclusion the Commission would recommend the establishment by all the states of labor bureaus or commissioners, who shall, besides their local duties as now defined, be charged with that of exchanging their statistics and reports, and of convening at least once in a year in national conference for general consultation, which national conference shall have power to submit directly to Congress its recommendations for such federal legislation as a majority of the state commissioners may deem advisable, and shall also submit to all the states, through the commissioners of each separate state, their recommendations for such uniform state statutes upon labor subjects as may seem wise and desirable." [1]

If we rightly interpreted the action of local governments in establishing these bureaus of labor, as a step towards more scientific legislation in those states, surely this plan of a national conference of state commissioners of labor stands for a still more important extension of the scientific method in questions of labor legislation. It also illustrates a tendency that is becoming more and more evident, namely, the fuller reliance that is being placed upon "intelligence as a social regulator" and "publicity for controlling industry and commerce." Make known the actual conditions that prevail, point out the appropriate remedy, and the weight of an informed public opinion will go far to force reform whether through an act of legislation or through the influence which may be exerted by consumers upon producers. Indeed the battle cry of the day is, "Give us but an enlightened public opinion and our fight is three-quarters won."

The suggestion of regulating business relations through the pressure of public sentiment has been seized upon with almost too great avidity by some who would apply it as the immediate and sufficient solution of all labor difficulties and as an argument against the enactment of any statutory regulations whatever. Such a proposition appears, however, of doubtful value at present under

[1] Report of Industrial Commission, Vol. V, p. 9.

the conditions of unenlightenment that unfortunately prevail, and it may be feared, does not proceed from the best friends of labor.

Constitutionality.

Recurring to this fact of opposition, already earlier noted, it has been questioned whether this counter-movement does not offer a real menace to the future growth of the labor laws, and indeed to the continued existence of the present body of legislation. In a number of instances where labor laws have been brought to the test of a court decision they have been pronounced unconstitutional and annulled upon the ground that they "contravene freedom of contract," are "class legislation" and so forth. This has been the fate of statutes regulating the hours of labor for women over twenty-one years of age in Nebraska, California and Illinois; of weekly payment laws in Pennsylvania, Illinois, Missouri, West Virginia and Indiana; of anti-truck acts in Pennsylvania, Ohio, Illinois and West Virginia; and of those prohibiting company stores or coercion of purchase in Pennsylvania, Illinois and Tennessee.

In Massachusetts, on the contrary, the regulation of hours was sustained "as a health or police regulation." Also at the time when the bill for the extension of the act concerning weekly payments was before the legislature the justices returned as their opinion to the House of Representatives that such an act was within the constitutional power of the General Court to pass. It is also worthy of notice, that in spite of the decision by the Supreme Court of Nebraska in 1894,[1] a new law defining hours of labor for women was passed in 1899, and to-day applies not only in factories, but in restaurants and hotels as well. Again, in the report just reviewed, the commissioners have recommended the general enactment of an anti-truck and freedom of purchase act in spite of the decisions of Pennsylvania, Illinois and Tennessee courts.

Verdicts of unconstitutionality have therefore hardly affected more than the very border of the factory laws; the regulation of child labor, of workroom conditions, of hours of labor for minors,

[1] 41 Neb., 127. Nebraska (1899, 197).—No female shall be employed in any manufacturing, mechanical or mercantile establishments, hotel or restaurant in this state more than sixty hours during any week, and ten hours shall constitute a day's labor The hours of each day may be so arranged as to permit employment of such females at any time from six o'clock in the morning to ten o'clock in the evening; but in no case shall such employment exceed ten hours in any one day.

have never even been questioned. It hardly seems likely that any of these laws will ever be put to the court test at all. Both in England and in this country, they have proven generally beneficial to public interest, they have been pretty cheerfully accepted and obeyed; they have gained public approval; they have the political support of a large labor party. Perhaps the apparently adverse action of the courts ought rather to be looked upon as a healthfully conservative influence against possible evil results of hasty and ill-considered legislation or attempts to interpose legislation where the object could be better obtained by the effective organization of labor and should be left to the initiative of the unions.

Factory legislation has been inevitably necessitated by the action of economic and social forces, and may, in fact, be regarded as a natural phenomenon accompanying the growth of the factory system of manufacture. It has developed against the opposition of extreme doctrines of free contract, and having demonstrated itself in the facts of actual life has also created a new theory of the relation of the state to labor and industry.

"The state may determine the plane of competition; it may equalize the conditions of contract as between employer and employee; it may intervene to protect the standard of living of the workers. The only limits that theory places upon these lines of interference are considerations of the general good."

In the historical development of factory laws, well-marked tendencies are traceable. The early attitude of timidity has given place to that of peremptory command. Progress has been steadily toward increased severity in the regulations imposed, increased exactness in detail and definition, towards distinctly placed responsibility and towards more adequate inspection.

The expansion of industry in this country has of course been accompanied by a like territorial extension of the labor laws. Accomplished through the independent action of the several state legislatures, the result has been an unfortunate confusion of unrelated and non-uniform measures. One of the recent and most important tendencies of this legislation is the movement for greater uniformity, made especially prominent by the attention given to it as a part of the study of the Industrial Commission. It indeed seems probable that these efforts will eventually issue in the determination of a minimum standard of labor legislation for the

country as a whole, above which common basis the states will rise in grade according to the development of industrial organization and consequent increase of regulation demanded. This is necessarily a matter of voluntary conformity on the part of the separate state legislatures and therefore a fulfillment to be awaited with all patience.